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ILLINOIS CHARITABLE ORGANIZATION LAWS

AND DUTIES OF CHARITABLE TRUSTEES OR OFFICERS

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WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS

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ILLINOIS CHARITABLE ORGANIZATIONS LAWS

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The Attorney General's Division of Charitable Trusts and Solicitations has, as its primary mission, the safeguarding of funds contributed to charity by generous Illinoisans.

Not only does the Division constantly review the activities, financial affairs and administration of charitable organizations and trusts, but it makes this information available to the public. You may call the Division in Chicago (793-2595) or in Springfield (782-1090). The registrations and annual reports of charitable organizations are available for public inspection.

A substantial portion of my office's resources is devoted to seeing that intended recipients of this generosity will benefit to the fullest from contributed funds or charitable trusts.

WILLIAM J. SCOTT
Attorney General
of the State of Illinois

FOREWORD

This pamphlet contains two statutes which regulate the activities of Illinois charitable organizations. These statutes are the Illinois Charitable Trust Act of 1961, as amended, (Ill. Rev. Stat. 1977, Ch. 14, Pars. 51–64) and "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes" (hereafter the Illinois Solicitation Act) (Ill. Rev. Stat. 1977, Ch. 23, Pars. 5101–5114). Both of these statutes are administered by the Attorney General. The Attorney General's Division of Charitable Trusts and Solicitations has offices in Springfield and Chicago, Illinois. Both of these Acts are comparatively recent developments of Illinois law. These Acts are basically registration and reporting Acts whose purpose is to provide the Attorney General with information to enable him to fulfill his common law duty of protecting charitable trusts. Charitable funds were given special status at common law and are given special recognition in Illinois. There are several reasons for this.

First, these funds are dedicated to the purpose of providing benefits for the public.

Second, these funds are given privileges and exemptions not given to the property held by ordinary citizens. In many cases they are exempt from taxation and are exempt from the rule against perpetuities.

Third, the Attorney General is assigned the duty of seeing that these funds are properly administered. However, the Attorney General's representation of the public in this matter was often frustrated by a lack of information about these trusts. Trustees were under no duty to notify the Attorney General of their existence or of their compliance with the terms of the trust. It was to close this informational gap that the Illinois Charitable Trust Act was enacted.

The Illinois Charitable Trust Act was enacted in 1961. It requires that trustees who hold assets for charitable purposes whose value exceed $4,000, must register and report annually. "Trustee" is defined to include all types of legal entities who hold funds for charitable purposes. Not for profit corporations are included in this definition. The Illinois Courts give special care and protection to charitable trusts and have long given a broad definition to the term "charity". In *Crerar, et al.* v. *Williams, et al.,* 145 Ill. 625, "charity"is defined as:

> "A charity, in a legal sense, may be defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of

> persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise bearing the burdens of government. It is immaterial whether the purpose is called charitable in the gift, if it is so described as to show that it is charitable in its nature."

By this definition it is apaprent that almost any activity which would benefit some indefinite but recognizable segment of the public would be considered charitable.

In most cases there is no question as to whether an organization is charitable. However, in the case of benevolent societies which perform some charitable activity the question frequently arises. Membership organizations devoted to the service of their members and the promotion of private and fraternal social interests are not charities even though they perform charitable services as incidental to their main purpose. The assets of these organizations are held for their general corporate purposes and are not devoted to charities. However, these organizations may become subject to the Charitable Trust Act if they solicit funds from the public for a charitable purpose or receive funds to be used for some specific charitable purpose. These organizations would then be acting as trustee and not as a fraternal or social organization.

The Illinois Charitable Trust Act provides for the registration of these trusts and for annual reports of their financial condition and charitable activities. The only exceptions are given to religious groups and organizations actually operating schools, hospitals, homes for the aged and cemeteries. Banks acting as trustees are excused from the reporting requirements of the Act. The result of this legislation is to provide the Attorney General with information concerning the existence and operation of Illinois charitable trusts. Without this information it would be almost impossible for him to fulfill his common law duty of supervision of these trusts. The charitable trust registration and periodic reports are public records which may be inspected by interested members of the public. The Charitable Trust Act provides a means by which the public supervision of funds which have been devoted to charitable purposes can be insured. It also discourages trustee abuse and encourages the prompt application of the income from these funds to the charitable purposes for which it was intended.

The Illinois Solicitation Act was originally enacted in 1963. It provides for the registration

and annual reporting of organizations which solicit funds in Illinois. This Act is intended to regulate those charitable organizations which derive their support from the public by compelling them to make a public accounting for these funds. It was the purpose of the Act to provide both the public and the Attorney General with information about these charities. Also, the Act should prevent fraudulent charities from operating in Illinois. Other provisions of this Act regulate the activities of professional fund raisers and solicitors.

The purpose of the Act is twofold:

First, it provides the Attorney General with the information necessary for him to oversee the collection and dispersal of the Illinois charitable dollar.

Second, it provides the public with a central source of information where they can quickly obtain detailed information on the fund raising, administrative and other expenses of a charity. They can also obtain an idea of the scope of the charity's operations. This information allows the Illinois citizens to intelligently determine whether a charity is worthy of support.

The people of Illinois are deluged each year with appeals to their charitable nature. These appeals come in many forms from the United Fund pledge to the receipt of unsolicited merchandise through the mails. Their response is generous and many millions of dollars change hands every year. Most of this money is used for the purposes for which it is intended. However, some of this money finds its way into the pockets of persons who use the facade of charity or who use a charity solely to drain it through high expenses. Each appeal is poignant and moving and seems to be worthy of support. Unless the donor has personal knowledge of the charity and its activities he cannot know what portion of his dollar will serve the intended purpose and what proportion will be paid to professional fund raisers or used up in administrative and fund raising expenses. The Illinois Solicitation Act makes this information accessible to the public.

The information on registered charities is readily available to the public. Anyone interested in the status of a particular charity can call the Division of Charitable Trusts in either Chicago or Springfield. The registrations and annual reports are public information and may be inspected in my office during ordinary business hours.

Organizations subject to the Illinois Solicitation Act may not legally solicit in Illinois without first filing a registration statement with the Attorney General. This statement must contain complete information on the organization, its officers and operations. This Act, with certain lim-

ited exceptions, covers all organizations which solicit more than $4,000, annually. These exceptions are contained in Section 3 of The Act and by the Attorney General's Rules and Regulations numbers 54–73.

Organizations registered under the Illinois Solicitation Act are required to file detailed financial reports. A review of this report enables the Attorney General's office to check on the proper utilization of charitable funds. In the case of large organizations which collect more than $25,000, annually, the financial statement filed with the Attorney General's office must be accompanied by the statement of a certified public accountant that the report accurately reflects the activities of the organization.

Another informational aspect of the Illinois Solicitation Act is its regulation of the activities of professional fund raisers. These persons are professionals whose business is raising money for charities or advising charities about raising funds. Many times these persons handle great sums of money. The registration and bonding requirements of the Act are efforts to prevent dishonesty by professional fund raisers and to provide some protections for the charitable organizations which employ them. Professional fund raising contracts are required to be filed with the Attorney General. This enables him to check the percentages of funds which are received by the charity and the professional fund raiser. The Attorney General has uncovered cases where little or none of the contributions were ever devoted to a charitable purpose.

The above is a summary of the two Illinois Charitable organization laws. It also gives some insight into their purposes. It is important to note that each of these Acts regulate some aspect of the operations of charitable organizations in Illinois. They are separate and distinct statutes. An organization may be subject to either, both or neither of these Acts depending upon its circumstances and operation. In considering whether an organization is required to register under either or both of these Acts, the separate requirements and exemptions of each Act must be considered.

It is my intention that the statutes reproduced in this book and the Rules and Regulations which I have promulgated for their administration will answer most of the questions which might be raised in connection with the application and administration of these statutes. However, should any question about the coverage or interpretation arise, my Division of Charitable Trust and Solicitations will be happy to assist you. Please contact them in Springfield, Illinois, Attorney General's Building, 500 South Second Street,

Zip Code 62706, Telephone 782-1090 or in Chicago, Illinois, 188 West Randolph, Suite 1826, Zip Code 60601, Telephone 793-2595.

It is not my desire to penalize charitable organizations or to create administrative burdens which will unduly hamper their operations. However, I have been charged by the Legislature with the enforcement of these Acts and I will fulfill that duty. My office will make every effort to cooperate with subject organizations and aid them in compliance with these Acts. It is my belief that these Acts will benefit all Illinois through the prevention of fraudulent use of charitable funds and by assuring the prompt application of charitable funds to their intended purposes. Trustees are urged to read the last section of this booklet which describes some of their duties and obligations.

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS

RULES AND REGULATIONS UNDER THE ILLINOIS CHARITABLE TRUST ACT AND "AN ACT TO REGULATE SOLICITATION AND COLLECTION OF FUNDS FOR CHARITABLE PURPOSES"

The Attorney General certifies that the attached hereto is a true and correct copy of: Revised Administrative Rules Charitable Trust and Solicitation Act which was duly adopted on the 28th day of August, 1978, and which repeal existing rules as of their effective date.

Statutory Authority	Illinois Revised Statutes
Ch. 14 and Ch. 23	Par. 58 and Par. 5102(h)

Dated this 28th day of August, 1978.

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS

ADMINISTRATIVE RULES CHARITABLE TRUSTS AND SOLICITATIONS ACT

I. ADMINISTRATIVE RULES UNDER THE ILLINOIS CHARITABLE TRUST ACT OF 1961, AS AMENDED

A. GENERAL AND DEFINITIONS

1. The Springfield office of the Division of Charitable Trust and Solicitations (hereafter Division) will maintain the principal register of charitable trusts registered under the Illinois Charitable Trust Act.

2. The register of charitable trusts will consist of index or computer cards, organization or

trust file folders, a list, a computer printout or a combination thereof.

3. The Chicago office of the Division will supervise and also maintain a register of charitable trusts registered in the Counties of Cook, Lake, McHenry and DuPage. The Chicago office also maintains index cards on all charitable organizations registered with the Attorney General.

4. "Trustee" is any person, group of persons or other legal entity who holds property intended to be used for charitable purposes.

5. "Charitable Purposes" includes without limitation any funds which are to be applied for the benefit of an indefinite number of people to provide them with:

A. Education.
B. The benefit of religion.
C. Relief from poverty, sickness or disease.
D. A means of establishing themselves in life.
E. Public building or recreational activities, or
F. Services which lessen the burden of government.

6. "Charitable Trusts" means any relationship whereby real or personal property is held for a charitable purpose or purposes.

7. A Charitable Remainder Trust is one where the income goes to the donor or designated individual for life, with remainder to an operating charity on the death of the life tenant. The Trust must be irrevocable, as to the remainder, to fall within this regulation. Registration is required of all such trusts. A Charitable Remainder Trust may qualify for alteration of the reporting requirement pursuant to Rules 38 through 40.

8. A trustee holds property when he has title or possession of the property and controls its distribution subject to conditions which devote the property to a charitable purpose. A custodian or depository does not hold property.

9. Trustees who hold property for charitable purposes with a value exceeding $4,000, are required to register.

10. For the purposes of registration, the value of a trust's assets is fair market value.

11. Where the value of trust assets fluctuate, the value is determined by its greatest value during the year or the total amount disbursed, whichever is greater.

B. REGISTRATION

12. A trustee subject to this Act must file with the Attorney General a registration statement within six (6) months after the property is received for charitable purposes.

13. Each trustee, officer, or director who resigns from a charitable organization must notify the Attorney General in writing of his resignation and the name and address of his successor.

14. Each trustee, officer or director is responsible for accurate record keeping and for the timely and accurate filing of financial reports required by the Attorney General. Resignation of such trustee, officer or director shall not avoid or diminish these record keeping and filing responsibilities for any period during which such person held office.

15. Each "trustee" has a fiduciary obligation toward: their charitable organization; charitable monies; donors; and unknown charitable beneficiaries as described by the charitable organization's stated purpose or the purpose for which charitable monies were collected.

16. To register, a charitable trust must file in duplicate a completed registration statement and the appropriate attachments, including schedule of assets and investments. All registrations must be accompanied by copies of the instrument under which the property is administered and a financial statement. Where there is no written instrument, the trustee must prepare an affidavit setting forth the conditions of the trust. The registration must be made by the trustee. In the case of a corporate charitable trust, the president and the treasurer must sign. Additional schedules may be required at the discretion of the Attorney General.

17. When a charitable trust combines the interest of living private individuals with charitable interests, confidential registration may be made.

18. A confidential registration statement shall contain the information required by Rule 16 and also two (2) additional copies of the trust instrument from which are deleted the names of the individual beneficiaries.

19. If an organization applies for an exemption from either State or Federal taxation, copies of this application and any determination shall be included in the registration statement.

20. When a bank or trust company is trustee or co-trustee of a charitable trust, it shall upon the request of the Attorney General supply a schedule of assets with the registration statement. The Attorney General shall be notified of any changes in individual Trustees.

21. The trustee shall notify the Attorney General of any changes in the registration information within thirty (30) days of the changes.

C. EXEMPTION

22. Trustees who hold property with a value of less than $4,000 are not required to register with the Attorney General provided that if assets exceed $4,000 during any 12 month period no exemption is available.

23. The Federal, State and local governments and their duly authorized agencies and subdivisions are exempt from the registration requirements of the Illinois Charitable Trust Act.

24. Religious bodies and their affiliated agencies are exempt from the registration requirements of the Illinois Charitable Trust Act.

25. Individual officers and directors of religious bodies who hold property in their official capacity are exempt from registration under the Illinois Charitable Trust Act.

26. Trustees who hold property for the purpose of and who are actually operating schools, hospitals, homes for the aged and cemeteries are exempt from the registration requirements of the Illinois Charitable Trust Act provided that if the charitable trust is engaged in non-exempt activities, it is required to register for those activities.

D. ANNUAL REPORTS

27. All trustees, with the exception of bank and trust companies, must file annual financial reports with the Attorney General. All trustees, including Banks and Trust Companies must notify the Attorney General of the termination of a charitable trust.

28. Unless excused by the Attorney General, the financial report must cover the most recent calendar or fiscal year of the charitable trust.

29. The annual financial report is due six (6) months after the close of that organization's fiscal or calendar year.

30. Financial reports are to be made on the forms provided by the Division unless an alternate filing as provided in Rules 33–36 is made.

31. The truth of all financial reports shall be attested by a trustee or corporate officer and the signature properly notarized.

32. The annual report must include a schedule of investments on the form provided by the Attorney General. The use of substitute forms or computer printouts may be approved in writing by the Attorney General upon a timely request.

33. A tax exempt organization may submit copies of the Internal Revenue Service form (now 990 or 990 PF), including all Federal attachments, in lieu of completing the Attorney General's report form, provided the Attorney General's alternate Report Supplement is also

submitted. Copies of the Report Supplement form are available upon request.

34. A report filed with an Illinois court having supervision and jurisdiction of the trust may be substituted for the report required by Rule 30.

35. An annual report prepared by a certified public accountant or Bank or Trust Company may be substituted for the report required by Rule 27 provided it contains substantially all the information required by the Attorney General's annual report form and provided the Attorney General's alternate Report Supplement is submitted.

36. Organizations registered under both the Illinois Charitable Trust Act and the Illinois Solicitation Act which file the annual report required by the Illinois Solicitation Act are not required to file a report under the Illinois Charitable Trust Act.

37. An organization may alter its fiscal year upon written notice to the office of the Attorney General and after providing whatever financial reports are necessary to furnish a complete picture of its operation.

38. The Attorney General may, for good reason, alter or suspend the reporting period of a charitable trust for a reasonable and specifically designated time.

39. Anyone requesting a change in reporting period or suspension of the reporting requirement shall file a written request with the Attorney General setting forth the reasons for the request and accompanied by a financial report showing the current financial condition of the trust. These applications shall be submitted to the Springfield office of the Division.

40. The Attorney General will make a written determination on the request. The request will only be granted if the beneficiary will not be prejudiced and periodic reporting is not required for the proper supervision of the trust.

E. PUBLIC RECORDS

41. The registrations and annual reports, except confidential ones, made with the Division are public records. They may be examined by interested members of the public in the office of the Attorney General during ordinary business hours in accordance with the Attorney General's public information rules.

II. ADMINISTRATIVE RULES UNDER THE ILLINOIS SOLICITATION ACT

A. GENERAL AND DEFINITIONS

42. The Division maintains a file of all charitable organizations, professional fund raisers and professional solicitors registered under the Illi-

nois Solicitation Act at its Springfield office and maintains duplicate files for registration pertaining to the counties of Cook, Lake, DuPage and McHenry in its Chicago office.

43. The words used in these Rules are used with the same meaning assigned to them by statute unless clarified below.

44. "Contributions" means the gross amount of money raised and not merely the portion which after expenses is devoted to the charity

45. "Charitable purposes" means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose and includes the conduct described in Rule 5.

B. REGISTRATION

46. Any charitable organization which solicits in Illinois must first register with the Attorney General unless it is exempted under Section 3(a) of the Illinois Solicitation Act or is not subject pursuant to the provisions of Section 3(b) of that Act.

47. To register, a charitable organization must file in duplicate completed registration statements and the appropriate attachments, including a schedule of investments on the form provided by the Attorney General. The use of substitute forms or computer printouts may be approved in writing by the Attorney General upon a timely request. All registrations must be accompanied by copies of the instrument under which the property is administered and a financial statement. If the organization employs a professional fund raiser, duplicate copies of its contract with the professional fund raiser must accompany the registration statement.

48. No professional fund raiser may be employed by a charitable organization in Illinois without prior registration with the Attorney General.

49. No professional solicitor may act in Illinois without prior registration with the Attorney General. No person may register as a professional solicitor unless he is employed by a registered professional fund raiser.

50. To register, a professional fund raiser must file in duplicate a completed registration statement, copies of all Illinois fund raising contracts and a professional fund raiser's bond.

51. The professional fund raiser's bond in the amount of $5,000, expiring upon the next June 30, issued with the professional fund raiser as principal and a corporate surety licensed to do business in Illinois, as surety, must accompany the registration. The bond must be in the form provided by the Division.

52. To register, a professional solicitor must

file in duplicate completed registration statements.

53. A registrant shall notify the Attorney General of any changes in registration information within ten (10) days of the change.

C. RELIGIOUS EXEMPTION

54. Religious organizations are subject to the Illinois Solicitation Act unless they have been exempted pursuant to the provisions of Section 3(a).

55. To qualify for a religious exemption, an organization must file in duplicate a completed registration statement and religious questionnaire.

56. The Attorney General may require the organization to supply such supplemental information as is necessary to determine its religious character.

57. The Attorney General may issue either a blanket or an individual religious exemption.

58. An individual religious exemption covers a single named religious group.

59. A blanket religious exemption is issued to and upon the request of the central body of a church or denomination and covers the church and all of the affiliated agencies listed in the exemption request.

60. Any religious organization with multiple subdivisions may request a blanket exemption.

61. An application for a blanket religious exemption must be filed by the central governing authority of the church and shall contain the information required by Rule 55 and also a list of the affiliated organizations and agencies which are directed and controlled by the central church.

62. If upon the filing of an application for religious exemption, the Attorney General determines that the organization is a religious one within the definition of Section 3(a) and that its purposes are actual and genuine, he will issue a religious exemption.

63. Organizations receiving blanket exemptions shall periodically supply the Attorney General with current lists of their affiliates.

D. NOT SUBJECT ORGANIZATIONS

64. Organizations which comply with the requirements of Rules 65 through 73 need not register under the Illinois Solicitation Act. However, this does not necessarily exempt them from the Illinois Charitable Trust Act.

65. Any charitable organization which solicits less than $4,000, annually and does not employ a professional fund raiser, need not register.

66. Any charitable organization which receives its funds from a United or Community Fund

and does not independently solicit $4,000, or employ a professional fund raiser, need not register.

67. Educational institutions and foundations having an established identity with an educational institution which fall within one or more of the following categories need not register:

(a) The University of Illinois, Southern Illinois University, Eastern Illinois University. Illinois State University, Northern Illinois University and Western Illinois University.

(b) All educational institutions that are recognized by the State Superintendent of Public Instruction.

(c) All educational institutions accredited by a regional or national accrediting association or by an organization affiliated with the National Commission on Accrediting.

(d) All educational institutions which confine their solicitation to students, faculty, trustees and their respective families.

68. Libraries which are established under State law and which file the annual reports required by law, need not register.

69. Fraternal, patriotic and similar organizations which confine their solicitation to their membership, need not register.

70. Persons conducting a charitable benefit for a particular person need not register provided that they are unpaid for their services and that the contributions, after reasonable expenses, are turned over to the named beneficiary.

71. Volunteer firemen and their auxiliaries, nurseries for infants awaiting adoption and their affiliates, need not register provided that their soliciations are conducted by their members and that the members are not paid for their services.

72. Any charitable organization organized by and reporting annually to the Congress of the United States need not register provided that its annual financial report is audited by the Federal government.

73. The Boys' Club of America and its affiliates need not register provided they file the annual reports required by the national organization and that the national organization makes the reports required by its charter.

E. ANNUAL REPORTS

74. All Charitable organizations registered under the Illinois Solicitation Act must file in duplicate an annual financial report signed by the president or other authorized officer and the chief fiscal officer.

75. Organizations which solicit more than $25,000, or which employ a professional fund raiser must complete the entire report form in-

cluding the certification of an independent certified public accountant.

76. An organization that has prepared a report of an independent certified public accountant may substitute that report for the Attorney General's form provided the Attorney General's alternate Report Supplement is also submitted.

77. Charitable organizations which have made a consolidated registration pursuant to Section 2(g) of the Illinois Solicitation Act shall include in their annual report such additional detailed financial information as will fairly represent the financial position of each of the affiliated groups.

78. Organizations which solicit less than $25,000 annually and do not employ a professional fund raiser, need only complete the applicable items of the report form and the certification of an independent certified public accountant need not be made.

79. For the purposes of these reports, $25,000, means $25,000, of contributions in public support and does not include bequests, community fund receipts and governmental grants.

80. Any registered organization which during its fiscal year does not solicit funds or whose solicitation is of such a nature that it would not have been required to registered (see Rules 64–73) may in lieu of the annual report file an affidavit setting forth these facts and which is signed by the president or other authorized officer and the chief fiscal officer.

81. The annual financial report is due six (6) months after the close of the organization's fiscal or calendar year.

82. The Attorney General may, upon written request, extend the time for the filing of the annual report for a period not to exceed three (3) months.

83. The registration of an organization is subject to cancellation for failure to file a timely and complete financial report.

84. An organization whose registration is being cancelled for failure to file the required financial report will receive 15 days notice of the cancellation.

F. PROFESSIONAL FUND RAISERS

85. The registration of all professional fund raisers expires on the next June 30th following their registration.

86. A registered professional fund raiser who wishes to continue to act as professional fund raiser in Illinois must reregister on or before July 1 of the year in which his registration expires.

87. To reregister, a professional fund raiser must file in duplicate a completed reregistra-

tion statement, annual financial report and professional fund raiser bond which meets the requirements of Rule 51 for the period beginning July 1 and ending June 30 of the next year.

88. All Illinois professional fund raisers must file duplicate copies of the professional fund raising contracts within ten (10) days of their execution.

89. All charitable organizations and professional fund raisers shall retain copies of their professional fund raising contracts for three (3) years following the completion of the contract.

G. PROFESSIONAL SOLICITORS

90. The registration of all professional solicitors shall expire on the next June 30th following their registration.

91. A registered professional solicitor who intends to continue to act as a professional solicitor in Illinois must reregister on or before July 1 of the year in which his registration expires.

92. To reregister a professional solicitor must file in duplicate a completed reregistration statement.

H. PUBLIC RECORDS

93. All registrations and reports filed with the Attorney General under the Illinois Solicitation Act are public records and may be inspected in the office of the Attorney General during ordinary business hours in accordance with the Attorney General's public information rule.

I. REGISTRATION NOT AN ENDORSEMENT

94. Any representation by a charitable organization, professional fund raiser, or professional solicitor in connection with its solicitation that it is registered or has otherwise complied with the Illinois Solicitation Act is unlawful.

95. The Attorney General may immediately cancel the registration of any person or organization violating Rule 94.

CHARITABLE TRUST ACT OF 1961, AS AMENDED

Illinois Revised Statutes 1977, Chapter 14, Paragraphs 51–64.

An Act providing for the reporting of and the enforcement of certain charitable trusts.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act may be cited as Charitable Trust Act.

Section 2. This Act applies to any trustee, as de-

fined in Section 3, holding property of value in excess of $4,000.

Section 3. "Trustee" means any individual, group of individuals, corporation or other legal entity holding property for any charitable purpose.

Section 4. This Act does not apply to the United States, any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or to any governmental subdivision; or to a corporation sole, or other religious corporation, trust or organization which holds property for religious, charitable, hospital or educational purposes or for the purpose of operating cemeteries or a home or homes for the aged; nor to any agency or organization, incorporated or unincorporated, affiliated with and directly supervised by such a religious corporation or organization; or to an officer, director or trustee of any such religious corporation, trust or organization who holds property in his official capacity for like purposes; or to a charitable organization, foundation, trust or corporation organized for the purpose of and engaged in the operation of schools or hospitals, or for the purpose of operating a cemetery or cemeteries or a home or homes for the aged.

Section 5. The Attorney General shall establish and maintain a register of trustees subject to this Act and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, shall conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees and other sources, copies of instruments, reports and records and whatever information is needed for the establishment and maintenance of the register.

Section 6. Every trustee subject to this Act who has received property for charitable purposes shall file with the Attorney General, within 6 months after any part of the income or principal is received for application to the charitable purpose, a copy of the trust agreement, articles of incorporation or other written instrument, if any, providing for his title, powers or duties. In the event a trustee subject to this Act is holding property for charitable purposes under no such written instrument, such trustee nevertheless shall file, in lieu of such instrument, a statement in writing setting forth his title, powers and duties with respect to the property he is so holding. If any part of the income or principal is authorized or required to be applied to the charitable

purpose at the time this Act takes effect, the filing shall be made within 6 months thereafter. Upon complying with the requirement of this Section, Banks and Trust Companies, authorized to accept and execute trusts in this State, and an individual or individuals duly appointed, qualified and acting as co-fiduciary or co-fiduciaries with any such Bank or Trust Company, shall be exempt from all other provisions and requirements of this Act.

Section 7. (a) Except as otherwise provided, every trustee subject to this Act shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship; if the account has been approved by the court in which it was filed, may be filed as a report required by this Section.

(d) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than one year after any part of the

income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this Act takes effect, the first report, unless the filing thereof is suspended, shall be filed within 6 months after the effective date of this Act.

(e) The periodic reporting provisions of this Act do not apply to any trustee of a trust which is the subject matter of an adversary proceeding pending in the circuit court in this State. However, upon commencement of the proceeding the trustee shall file a report with the Attorney General informing him of the fact together with the title and number of the cause and the name of the court. Upon entry of final judgment in the cause the trustee shall in like manner report that fact to the Attorney General.

Section 8. The Attorney General may make additional rules and regulations necessary for the administration of this Act.

Section 9. The Attorney General may investigate transactions and relationships of trustees subject to this Act for the purpose of determining whether the property held for charitable purposes is properly administered. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title and evidence of assets, liability, receipts, or disbursements in the possession or control of the person ordered to appear.

Section 10. When the Attorney General requires the attendance of any person, as provided in Section 9, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be served upon the person in the manner provided for service of process in civil cases at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by the circuit court in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. Such court may, in case of contumacy or refusal to obey the order issued by the Attorney General, issue an order requiring such person to appear before the Attorney General or to produce documentary evi-

dence, if so ordered, or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by that court as a contempt upon itself. The investigation or hearing may be made by or before any Assistant Attorney General designated in writing by the Attorney General to conduct such investigation or hearing on his behalf. Witnesses ordered to appear shall be paid the same fees and mileage as are paid witnesses in the circuit courts of this State, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this State. The Attorney General or the Assistant Attorney General acting in his behalf is empowered to administer the necessary oath or affirmation to such witnesses.

Section 11. Subject to reasonable rules and regulations adopted by the Attorney General, the register, copies of instruments and reports filed with the Attorney General shall be open to public inspection.

Section 12. The Attorney General may institute appropriate proceedings to secure compliance with this Act and to secure the proper administration of any trust or other relationship to which this Act applies. Nothing in this Act confers on the Attorney General any additional powers to administer, supervise, or direct the administration of charitable trusts.

Section 13. This Act shall apply regardless of any contrary provisions of any instrument.

Section 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

As amended by Act approved July 15, 1963.

ILLINOIS SOLICITATION ACT OF 1963, AS AMENDED

Illinois Revised Statutes 1977, Chapter 23, Paragraphs 5101–5114

An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes, 1963, as Amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. The following words and phrases as

used in this Act shall have the following meanings unless a different meaning is required by the context.

(a) "Charitable organization." Any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each local, county, or area division within this State of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

(b) "Contribution." The promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in such organization confers a bona fide right, privilege, professional standing, honor or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority. Reference to the dollar amount of "contributions" in this Act means in the case of promises to pay, or payments for merchandise or rights of any other description, the value of the total amount promised to be paid or paid for such merchandise or rights and not merely that portion of the purchase price to be applied to a charitable purpose.

(c) "Person." Any individual, organization, group, association, partnership, corporation, trust or any combination of them.

(d) "Professional fund raiser." Any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in this State for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself out to persons in this State as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization shall not be deemed a professional fund raiser unless his salary or other compensation is computed on the basis of funds to be raised, or actually raised.

(e) "Professional solicitor." Any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes from persons in this State.

(f) "Charitable purpose." Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Section 2. (a) Every charitable organization, ex-

cept as otherwise provided in Section 3 of this Act, which solicits or intends to solicit contributions from persons in this State by any means whatsoever shall, prior to any solicitation, file with the Attorney General upon forms prescribed by him, a registration statement which shall include the following information:

1. The name of the organization and the name or names under which it intends to solicit contributions.

2. The names and addresses of the officers, directors, trustees, and chief executive officer of the organization.

3. The addresses of the organization and the addresses of any offices in this State. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records.

4. Where and when the organization was legally established, the form of its organization and its tax exempt status.

5. The purpose for which the organization is organized and the purpose or purposes for which the contributions to be solicited will be used.

6. The date on which the fiscal year of the organization ends.

7. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.

8. The names and addresses of any professional fund raisers who are acting or have agreed to act on behalf of the organization.

9. Methods by which solicitation will be made.

10. Copies of contracts between charitable organizations and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. Where any such contract is executed after filing of registration statement, a copy thereof shall be filed within 10 days of the date of execution.

11. Board, group, or individual having final discretion as to the distribution and use of contributions received.

(b) The registration statement shall be signed by the president or other authorized officer and the chief fiscal officer of the organization.

(c) Such registration shall remain in effect unless it is either cancelled as provided in this Act or withdrawn by the organization.

(d) Every registered organization shall notify the Attorney General within 10 days of any change in the information required to be furnished by such organization under paragraphs 1 through 11 of subdivision (a) of this Section.

(e) In no event shall a registration of a charitable organization continue, or be continued in

effect after the date such organization should have filed, but failed to file, an annual report in accordance with the requirements of Section 4 of this Act, and such organization shall not be eligible to file a new registration until it shall have filed the required annual report with the Attorney General. If such report is subsequently filed such organization may file a new registration.

(f) Subject to reasonable rules and regulations adopted by the Attorney General, the register, registration statements, annual reports, financial statements, professional fund raisers' contracts, bonds, applications for registration and reregistration, and other documents required to be filed with the Attorney General shall be open to public inspection.

Every person subject to this Act shall maintain accurate and detailed books and records at the principal office of the organization to provide the information required herein. All such books and records shall be open to inspection at all reasonable times by the Attorney General or his duly authorized representative.

(g) Where any local, county or area division of a charitable organization is supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this State, such local, county or area division shall not be required to register under this Section if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. Where a registration statement has been filed by a superior or parent organization as provided in Section 2 (g) of this Act, it shall file the annual report required under Section 4 of this Act on behalf of the local, county or area division in addition to or as part of its own report, but the accounting information required under Section 4 of this Act shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than $4,000.

(h) The Attorney General may make rules of procedure and regulations necessary for the administration of this Act. Copies of all such rules of procedure and regulations and of all changes therein, duly certified by the Attorney General, shall be filed in the office of the Secretary of State.

Section 3. (a) Upon initial filing of a registration statement pursuant to Section 2 of this Act and notification by the Attorney General of his determination that the organizational purposes

specified in this paragraph for exemption are actual and genuine, this Act shall not apply to a corporation sole or other religious corporation, trust or organization incorporated or established for religious purposes, nor to any agency or organization incorporated or established for charitable, hospital or educational purposes and engaged in effectuating one or more of such purposes, that is affiliated with, operated by, or supervised or controlled by a corporation sole or other religious corporation, trust or organization incorporated or established for religious purposes, nor to other religious agencies or organizations which serve religion by the preservation of religious rights and freedom from persecution or prejudice or by fostering religion, including the moral and ethical aspects of a particular religious faith.

(b) The following persons shall not be required to register with the Attorney General:

1. The University of Illinois, Southern Illinois University, Eastern Illinois University, Illinois State Normal University, Northern Illinois University, Western Illinois University, all educational institutions that are recognized by the Superintendent of Public Instruction or that are accredited by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families, or a library established under the laws of this State, provided that the annual financial report of such institution or library shall be filed with the Superintendent of Public Instruction, Governor, Illinois State Library, County Library Board or County Board, as provided by law.

2. Fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is confined to their membership. This exemption shall be extended to any subsidiary of a parent or superior organization exempted by Sub-paragraph 2 of Paragraph (b) of Section 3 of this Act where such solicitation is confined to the membership of the subsidiary, parent or superior organization.

3. Persons requesting any contributions for the the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets, or social gatherings, if any, provided all fund raising functions are carried on

by persons who are unpaid, directly or indirectly, for such services.

4. Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of $4,000 during any 12 month period ending June 30th of any year, provided all of its fund raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any 12 month period ending June 30th of any year shall be in excess of $4,000, it shall within 30 days after the date it shall have received total contributions in excess of $4,000 register with the Attorney General as provided in Section 2.

5. Any charitable organization receiving an allocation from an incorporated community chest or united fund, provided such chest or fund is complying with the provisions of this Act relating to registration and filing of annual reports with the Attorney General, and provided such organization does not actually receive, in addition to such allocation, contributions in excess of $4,000 during any 12 month period ending June 30th of any year, and provided further that all the fund raising functions of such organization are carried on by persons who are unpaid for such services. However, if the gross contributions other than such allocation received by such charitable organization during any 12 month period ending June 30th of any year shall be in excess of $4,000, it shall within 30 days after the date it shall have received such contributions in excess of $4,000 register with the Attorney General as required by Section 2.

6. A bonafide organization of volunteer firemen, or a bona fide auxiliary or affiliate of such organization, provided all its fund raising activities are carried on by members of such an organization or an affiliate thereof and such members receive no compensation, directly or indirectly, therefor.

7. Any charitable organization operating a nursery for infants awaiting adoption providing that all its funds raising activities are carried on by members of such an organization or an affiliate thereof and such members receive no compensation, directly or indirectly therefor.

8. Any corporation established by the Federal Congress that is required by federal law to submit annual reports of its activities to Congress containing itemized accounts of all receipts and expenditures after being duly audited by the Department of Defense or other federal department.

9. Any boys' club which is affiliated with the Boys' Club of America, a corporation chartered by Congress; provided, however, that such an affil-

iate properly files the reports required by the Boys' Club of America and that the Boys' Club of America files with the Government of the United States the reports required by its federal charter.

Section 4. (a) Every charitable organization registered pursuant to Section 2 of this Act which shall receive in any 12 month period ending June 30th of any year contributions in excess of $25,000, and every charitable organization whose fund raising functions are not carried on solely by persons who are unpaid for such services shall file a written report with the Attorney General upon forms prescribed by him, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, which shall include a financial statement covering the immediately preceding 12 month period of operation. Such financial statement shall include a balance sheet and statement of income and expense, and shall be consistent with forms furnished by the Attorney General clearly setting forth the following: gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or source; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of this State, with explanation as to recipient and purpose; total net amount disbursed or dedicated for each major purpose, charitable or otherwise. Such report shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization, and shall be accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations.

(b) Every organization registered pursuant to Section 2 of this Act which shall receive in any 12 month period ending June 30th of any year contributions not in excess of $25,000, and all of whose fund raising functions are carried on by persons who are unpaid for such services shall file a written report with the Attorney General upon forms prescribed by him, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, which shall include a financial statement covering the immediately preceding 12 month pe-

riod of operation limited to a statement of such organization's gross receipts from contributions, funds raising expenses including a separate statement of the cost of any goods, services or admissions supplied as part of its solicitations, and the disposition of the net proceeds from contributions. Such report shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization who shall certify that the statements therein are true and correct to the best of their knowledge.

(c) For any fiscal or calendar year of any organization registered pursuant to Section 2 of this Act in which such organization would have been exempt from registration pursuant to Section 3 of this Act if it had not been so registered, or in which it did not solicit or receive contributions, such organization shall file, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, instead of the reports required by subdivisions (a) or (b) of this Section, a report in the form of an affidavit of its president and chief fiscal officer stating the exemption and the facts upon which it is based or that such organization did not solicit or receive contributions in such fiscal year. The affidavit shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization.

(d) The Attorney General shall cancel the registration of any organzation which fails to comply with subdivisions (a), (b) or (c) of this Section within the time therein prescribed, or fails to furnish such additional information as is requested by the Attorney General within the required time; except that the time may be extended by the Attorney General for a period not to exceed 3 months. Notice of such cancellation shall be mailed to the registrant at least 15 days before the effective date thereof.

Section 5. Any charitable organization, person, professional fund raiser or professional solicitor, which or who solicits contributions in this State but does not maintain an office within the State shall be subject to service of process, as follows:

(a) By service thereof on its registered agent within the State or if there be no such registered agent, then upon the person who has been designated in the registration statement as having custody of the books and records within this State; where service is effected upon the person so designated in the registration statement a copy of

the process shall, in addition, be mailed to the charitable organization at its last known address:

(b) When a charitable organization has solicited contributions in this State, but maintains no office within the State, has no registered agent within the State, and no designated person having custody of its books and records within the State, or when a registered agent or person having custody of its books and records within the State cannot be found as shown by the return of the sheriff of the county in which such registered agent or person having custody of its books and records has been represented by the charitable organization as maintaining an office, service may be made by delivering to and leaving with the Secretary of State, or with any deputy or clerk in the corporation department of his office, three copies thereof and a fee of $6:

(c) Following service upon the Secretary of State the provisions of law relating to service of process on foreign corporations contained in "The Business Corporation Act," filed July 13, 1933, as heretofore and hereafter amended, shall thereafter govern:

(d) The solicitation of any contribution within this State shall be deemed to be the agreement of the charitable organization that any process against it which is so served in accordance with the provisions of this Section shall be of the same legal force and effect as if served personally within this State.

Section 6. (a) No person shall act as a professional fund raiser for a charitable organization required to register pursuant to Section 2 of this Act, or for any religious organization as described in Section 3(a) of this Act before he has registered with the Attorney General or after the expiration or cancellation of such registration or any renewal thereof. Applications for registration and reregistration shall be in writing, under oath, in the form prescribed by the Attorney General. The applicant shall at the time of making application file with, and have approved by, the Attorney General a bond in which the applicant shall be the principal obligor, in the sum of $5,000, with one or more corporate sureties licensed to do business in this State whose liability in the aggregate will at least equal such sum. The bond shall run to the Attorney General for the use of the State and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of such solicitation; provided, that the aggregate limit of liability of the surety to the State and to all such persons shall, in no event, exceed the sum of such bond. Registration or reregistration when effected shall be for a period of one year, or a part there-

of, expiring on the 30th day of June, and may be renewed upon written application, under oath, in the form prescribed by the Attorney General and the filing of the bond for additional one year periods. Every professional fund raiser required to register pursuant to this Act shall file an annual written report with the Attorney General containing such information as he may require by rule.

(b) Any person who violates the provisions of this Section is guilty of a Class A misdemeanor.

Section 7. All contracts entered into between professional fund raisers and charitable organizations shall be in writing and a true and correct copy of each such contract shall be filed by the professional fund raiser who is party thereto with the Attorney General within 10 days after it is made. True and correct copies of such contracts shall be kept on file in the offices of the charitable organization and the professional fund raiser during the term thereof and until the expiration of a period of 3 years subsequent to the date the solicitation of contributions provided for therein actually terminates. Any person who violates the provisions of this Section is guilty of a Class A misdemeanor.

Section 8. (a) No person shall act as a professional solicitor in the employ of a professional fund raiser required to register pursuant to Section 6 of this Act before he has registered with the Attorney General or after the expiration or cancellation of such registration or any renewal thereof. Application for registration or reregistration shall be in writing, under oath, in the form prescribed by the Attorney General. Such registration or reregistration when effected shall be for a period of one year, or a part thereof, expiring on the 30th day of June, and may be renewed upon written application, under oath, in the form prescribed by the Attorney General for additional one year periods.

(b) Any person who violates the provisions of this Section is guilty of a Class A misdemeanor.

Section 9. (a) An action for violation of this Act may be prosecuted by the Attorney General in the name of the people of the State, and in any such action the Attorney General shall exercise all the powers and perform all duties which the State's Attorney would otherwise be authorized to exercise or to perform therein.

(b) This Act shall not be construed to limit or restrict the exercise of the powers or the performance of the duties of the Attorney General which he otherwise is authorized to exercise or perform under any other provision of law by statute or otherwise.

(c) Whenever the Attorney General shall have

reason to believe that any charitable organization, professional fund raiser, or professional solicitor is operating in violation of the provisions of this Act, or if any of the principal officers of any charitable organization has refused or failed, after notice, to produce any records of such organization or there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme, or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, or any false statement has been made in any application, registration or statement required to be filed pursuant to this Act, or the solicitation of funds includes the sending of goods, wares and merchandise not ordered or requested by the recipient and where more than 25% of the total funds so raised are paid over to the manufacturer, supplier or agent thereof of the goods, wares and merchandise, or where less than 75% of the gross receipts, excluding any bequests or gifts by will or other testamentary device, of such charitable organization as defined in Section 1 are used for charitable purposes. Gross receipts shall mean receipts after the legitimate and reasonable cost of any merchandise for resale or the legitimate and reasonable cost of services required with the fund raising event or program are deducted; in addition to any other action authorized by law, he may bring in the circuit court an action in the name, and on behalf of the people of the State of Illinois against such charitable organization and any other person who has participated or is about to participate in such solicitation or collection by employing such device, scheme, artifice, false representation or promise, to enjoin such charitable organization or other person from continuing such solicitation or collection or engaging therein or doing any acts in furtherance thereof, or to cancel any registration statement previously filed with the Attorney General.

In connection with such proposed action the Attorney General is authorized to take proof in the manner provided in Section 58 of the Civil Practice Act.

(d) Upon a showing by the Attorney General in an application for an injunction that any person engaged in the solicitation or collection of funds for charitable purposes, either as an individual or as a members of a copartnership, or as an officer of a corporation or as an agent for some other person, or copartnership or corporation, has been convicted in this State or elsewhere of a felony or of a misdemeanor where such felony or misdemeanor involved the misappropriation, misapplication or misuse of the money or property of another, he may enjoin such persons from en-

gaging in any solicitation or collection of funds for charitable purposes.

(e) The Attorney General may exercise the authority granted in this Section against any charitable organization or person which or who operates under the guise or pretense of being an organization exempted by the provisions of Section 3 and is not in fact an organization entitled to such an exemption.

(f) In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.

Section 10. When the Attorney General requires the attendance of any persons as provided in Section 9 he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be served upon the person in the manner provided for service of process in civil cases at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General obedience to the order may be enforced by any court having jurisdiction in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. Such court may, in case of contumacy or refusal to obey the order issued by the Attorney General, issue an order requiring such person to appear before the Attorney General or to produce documentary evidence, if so ordered, or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by that court as a contempt upon itself. The investigation or hearing may be made by or before any Assistant Attorney General designated in writing by the Attorney General to conduct such investigation or hearing on his behalf. Witnesses ordered to appear shall be paid the same fees and mileage as are paid witnesses in the circuit courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this State. The Attorney General or the Assistant Attorney General acting in his behalf is empowered to administer the necessary oath or affirmation to such witnesses.

Section 11. (a) No person shall for the purpose of soliciting contributions from persons in this State, use the name of any other person, except that an officer, director or trustee of the charitable organization by or for which contributions are solicited, without the written consent of such other persons.

(b) A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or his name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored or endorsed the charitable organization or it activities.

(c) Nothing contained in this Section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operation and affairs to its membership or for the purpose of reporting contributions to contributors.

(d) No charitable organization or professional fund raiser soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(e) Any person who willfully violates the provisions of this Section is guilty of a Class A misdemeanor.

Section 12. Registration under this Act shall not be deemed to constitute an endorsement by the State of Illinois of the charitable organization, professional fund raiser, or professional solicitor so registered. It shall be unlawful for any charitable organization, professional fund raiser, or professional solicitor to represent, directly or indirectly, for the purpose of solicitation and collection of funds for charitable purposes, in any form or manner whatsoever by advertising or otherwise, that it has registered or otherwise complied with the provisions of this Act. The Attorney General shall cancel the registration of any organization, professional fund raiser, or professional solicitor which or who violates the provisions of this Section.

Section 13. The Attorney General may enter into reciprocal agreements with a like authority of any other State or States for the purpose of exchanging information made available to the Attorney General or to such other like authority.

Section 14. If any provision of this Act, or the application of such provision to any persons, body or circumstances shall be held invalid, the remainder of this Act, or the application of such provision to persons, bodies or circumstances other than those as to which it shall have been held invalid, shall not be affected hereby.

THE ATTORNEY GENERAL AND DUTIES OF TRUSTEES

William J. Scott as the Attorney General of Illinois, is the constitutional legal officer for the State. His office, from our first Constitution, up to the present 1970 Constitution, has been an independent executive office. (Ill. Const. 1970, Art. V, §15). As the chief legal officer of the State he must determine how the legal business of the State of Illinois shall be conducted. *Environmental Protection Agency* v. *Pollution Control Board* (1977), 69 Ill.2d 394. As a constitutional officer, he has all of the power of his common law counterpart and this power cannot be taken away by the legislature. *Fergus* v. *Russel* (1915), 270 Ill. 304. The judicial interpretation of the Attorney General's powers was adopted by the delegates to the Constitutional Convention which resulted in the present 1970 Illinois Constitution. *People ex rel Scott* v. *Briceland* (1976), 65 Ill.2d 485.

One of the important duties of the Attorney General at Common Law was to protect the interest of the public in litigation involving a gift to charity. This right was recognized from a very early date in Illinois. In *Stowell* v. *Prentiss* (1926), 323 Ill. 309, the Illinois Supreme Court summarized and restated the powers of the Illinois Attorney General in this area. The Attorney General is a proper party and in many cases a necessary party in litigation involving a charitable gift. The court has also recognized that this power and duty extended to funds raised by public subscription as well as those trusts created by a single donor. *Kerner* v. *Thompson* (1938), 293 Ill. App. 454. The merger of a charitable gift into a not for profit corporation and passage of many years does not remove the gift from supervision by the Attorney General. *Holden Hospital Corp.* v. *Southern Illinois Hospital Corp.* (1961), 22 Ill.2d 150. Recently the court recognized that the presence of the Attorney General in litigation involving a charitable trust is so important that an appeal by the Attorney General would be allowed to the Supreme Court even when he was not made a party in trial or appellate court. *In re Tomlinson* (1976), 65 Ill.2d 382.

It was against the background of broad responsibility for the supervision of charitable trusts that the Illinois Charitable Organization Laws were developed in furtherance of the common law concept of accountability of trustees for their action or inaction. The Attorney General intends to enforce the duties of charitable trustees and

protect the charitable interest of the public. The term "trustee" includes officers of charitable organizations whether or not that organization is incorporated.

Trustees should seek legal and tax counsel to fully understand their duties under the Common Law, Internal Revenue Code and State statutes.

The following duties and responsibilities of trustees are provided as examples of trustees' fiduciary obligations and are by no means exhaustive of such obligations:

1. Trustees have a duty to avoid "Self Dealing," or conflicts of interest where by reason of their position of trustee they allow transactions to occur which might not benefit the charitable organization and which gave the appearance of or have the potential of conferring a benefit (monetary or otherwise) upon the trustee or the trustee's relatives, friends or business associates. An overlapping common law concept is the duty of loyalty to the trust.
2. Trustees have the duty to make prudent investment decisions in the acquisition or divestment of any securities, land or other assets intended to benefit charity. This duty includes but is not limited to:
 a. Avoidance of speculative stocks or bonds, especially those producing no income.
 b. Avoidance of investments in land or buildings not directly used in carrying out the organization's charitable purpose, especially real property investments which produce no income.
 c. Refusing to incur debt obligations to finance the purchase of investments.
 d. Disposing of gifts which would otherwise be considered imprudent investments.
 e. Complying with Internal Revenue Code requirements regarding excess business holdings and other regulations which affect investment decisions.
3. Trustees must conform to the charitable purpose set forth in the trust, corporate charter or other creating instrument, as well as any restrictions placed upon the use of income and not principal or other limitations as to who is to benefit from the charitable funds. Significant changes to irrevocable restrictions must be done through the court and by making the Attorney General a party to the suit.
4. Trustees must make every effort to avoid waste, examples of which would be:
 a. Incurring federal taxes or penalties which could have been avoided.
 b. Leaving excessive cash in non-income producing bank accounts or otherwise failing to make the trust property productive.

c. Incurring penalties such as from building code violations.
d. Selling assets for less than fair market value.
e. Payment of excessive salaries or professional fees.
f. Failing to distribute funds, and thereby not benefiting any charitable beneficiaries.
g. Diverting charitable funds for personal expenses.

The breach of trustees' duties can result in punitive damages or the assessment of surcharges by a court of equity requiring trustees to restore funds lost or wasted through the action or inaction of such trustees.

STATUTES WHICH MAY AFFECT CHARITABLE ORGANIZATIONS

The following is a listing of the more frequently encountered Illinois statutes which may affect charitable organizations:

Ch. 110 1/2	Administration of Estates (Probate Act)
Ch. 14 §51 et seq.	Charitable Trust Act
Ch. 23 §5101 et seq.	Illinois Solicitation Act
Ch. 28	Common Law
Ch. 30. §159 et seq.	Principal and Income Act
Ch. 32 §163a et seq.	Not for Profit Corporation Act
Ch. 69	Injunction Act
Ch. 148 §101 et seq.	Trust and Trustees Act

"Trustees" should carefully note the requirements of the Internal Revenue Code as it applies to charitable organizations and Private Foundations, as violations or potential violations thereof can be the basis for legal action by the Illinois Attorney General.

SOLICITING ORGANIZATIONS

Certain organizations have solicited charitable contributions but later contended that they did not believe they were in fact soliciting and should not be required to register or report. The following are some of the acts that indicate an organization is subject to the Solicitation Act:

1. Indication in literature, advertising or in verbal solicitation that purchase of a service or item of merchandise, or the donation of money or merchandise allows the purchaser/donor to take a charitable tax deduction.
2. Advertising in any manner that all or some of the proceeds collected will be used for charitable purposes.
3. Using the name of an established charity when seeking purchaser/donors and stating or implying that their charitable work would be furthered if a purchase or donation is made.
4. Using an organization's name or naming an event in such a way that the name itself suggests a charitable purpose when funds are solicited.
5. Selling tickets and indicating to purchasers that if they buy a ticket but do not want to use it that underprivileged children or other needy persons will be given the unused tickets.

These types of acts and selling techniques will in almost every case be held to indicate a charitable solicitation and require compliance with the Act. Each of these points have the common element of leading the potential donors to believe that they are not merely buying goods and services but that they are in some way benefiting those who are less fortunate. Organizations that are required to register must do so *before* soliciting for charitable contributions.

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